



City of Concord

City Council Meeting Minutes

Monday, June 8, 2015

7:00 PM

City Council Chambers
37 Green Street
Concord, NH 03301

Non-public session in accordance with RSA 91-A:2, I(a) to discuss strategy or negotiations with respect to collective bargaining followed by non-public session in accordance with RSA 91-A: 3, II (d) to discuss property acquisition and a non-public session in accordance with RSA 91-A: 3, II to discuss the City Manager's Evaluation to begin at 5:30 p.m.

1. The Mayor called the meeting to order at 7:00 p.m.
2. Invocation by Reverend Kate Atkinson, St. Paul's Church.
3. Pledge of Allegiance.
4. Roll Call.

Present: 14 - Councilor J. Allen Bennett, Councilor Candace Bouchard, Mayor Jim Bouley, Councilor Byron Champlin, Councilor Mark Coen, Councilor Amanda Grady Sexton, Councilor Allan Herschlag, Councilor Fred Keach, Councilor Jan McClure, Councilor Keith Nyhan, Councilor Dan St. Hilaire, Councilor Stephen Shurtleff, Councilor Brent Todd, and Councilor Robert Werner

Excused: 1 - Councilor Gail Matson

5. Approval of the Meeting Minutes.

Action: Councilor St. Hilaire moved approval. The motion was duly seconded and passed with no dissenting votes.

6. Agenda overview by the Mayor.
7. Resolution in recognition of the Services of Master Police Officer Eric A. Crane.

****Consent Agenda Items****

Action: Mayor Bouley took Rule Six on item 19. Councilor Nyhan moved approval of the consent agenda. The motion was duly seconded and passed with no dissenting votes.

Referral to Community Development

8. Communication from Amy Manzelli, Esq, BCM Environmental & Land Law, PLLC. on behalf of her client Fournier Foods, LLC requesting that City Council release and

discharge the dedicated portion of Locke Road that remains as a "paper street".

Communication referred to Community Development.

Referrals to the Traffic Operations Committee

9. Communication from Kristina Snyder requesting the installation of traffic calming measures on Pearl Street in Concord.

Communication referred to the Traffic Operations Committee.

10. Communication from Councilor Herschlag requesting that through trucking on Borough Road be prohibited as well as requesting that, if necessary, signage indicating no through trucking be replaced on River Road.

Action: Mayor Bouley indicated that the City Manager has the authority to determine whether through trucking is permissible. The only portion of this communication that is being referred to the Traffic Operations Committee is the signage on River Road.

Items Tabled for July 13, 2015 Public Hearings

11. Resolution appropriating the sum of \$21,482 approved through the Department of Justice - Office of Justice Programs - Bulletproof Vest Partnership Program to fund fifty percent of ballistic vest purchases made by the Concord Police Department; together with report from the Deputy Chief of Police - Administration.

This resolution was moved to set for a public hearing.

12. Resolution accepting and appropriating the sum of \$23,634 in unmatched grant funds from the United States Department of Justice, Edward Byrne Memorial Justice Assistance Grant Program, funds designated for law enforcement related programs; together with report from the Police Department.

This resolution was moved to set for a public hearing.

13. Ordinance amending the Code of Ordinances, Title III, Building and Housing Codes; Chapter 26, Building Regulations; Article 26-16, Fire Prevention Code and Article 26-18, Life Safety Code; together with report from the Fire Chief.

This ordinance was moved to set for a public hearing.

14. Ordinance amending the Code of Ordinances, Title III, Building and Housing Codes; Chapter 26, Building Regulations; Article 26-7, Fire Limits; together with report from the Fire Chief.

This ordinance was moved to set for a public hearing.

From the City Manager

15. Positive Citizen Comments.

Positive comments were received and filed.

Consent Reports

16. Diminimus gifts and donations report from the Library Director requesting authorization to accept monetary gifts totaling \$2,739.02 as provided for under the pre-authorization granted by City Council.

This consent report was approved.

17. Report from the Deputy City Manager for Development recommending that Tandy's Restaurant be allowed a license to install a removable, non-exclusive, seasonal deck in Eagle Square.

This consent report was approved.

18. Report from the General Services Department requesting authorization of the repurposing of \$30,000 for the enclosure of the open side of cold storage and the concrete flat work repairs in the maintenance garage at the Combined Operations Maintenance Facility (COMF), FY2015 CIP # 323.

This consent report was approved.

19. Report from the City Engineer recommending City Council accept off-site improvements related to the Concord Hospital East Drive Signalized Intersection, CIP # 40.

This consent report was approved. Mayor Bouley did not vote on this item.

20. Report from the Director of Redevelopment, Downtown Services, & Special Projects concerning funding for the Capital Commons Parking Garage Reorganization.

This consent report was approved.

21. Report from Code Administration regarding Intown Concord's request to serve alcohol at Market Days on Main Street.

This consent report was approved.

Consent Resolutions

22. Resolution authorizing the City Manager to submit an application to the United States Department of Justice - Edward Byrne Memorial Justice Assistance Grant Program for funds designated for law enforcement related programs; together with report from the Police Department.

This consent resolution was approved.

Consent Communications**Appointments**

23. Mayor Bouley's proposed appointment to the Concord's Plan to End Homelessness Steering Committee. *Joanne St. Hilaire*

This appointment was approved. Councilor St. Hilaire clarified that Joanne St. Hilaire is not related to him.

End of Consent Agenda

June 8, 2015 Public Hearings

- 24A. Resolution amending and restating the Revolving Loan Fund's Program Income Reuse Plan (PIRP); together with a report from the Director of Redevelopment, Downtown Services, and Special Projects.

Action: City Manager Tom Aspell provided a brief overview.

Mayor Bouley opened the public hearing. There being no public testimony, the Mayor closed the hearing.

- 24B. Resolution authorizing the City Manager to submit an application in an amount of up to \$500,000 and to accept and appropriate grant proceeds of up to \$500,000 in Community Development Block Grant Funds on behalf of Merrimack Valley Day Care Services; together with report from the Director of Redevelopment, Downtown Services and Special Projects.

Action: There being no Council objection, the City Clerk read the titles for public hearings B and C together.

Matt Walsh, Director of Redevelopment, Downtown Services and Special Projects, explained that these funds, if awarded and accepted by the city, would finance roof repairs, drainage improvements, HVAC improvements as well as other code upgrades at the 19 North Fruit Street property which were identified in a 2012 needs assessment funded in part by Community Development Block Grant funds secured by the city. He noted that the majority of children at the daycare are from households that are low to moderate income.

Mr. Walsh indicated that Community Development Block Grants, in general, are available to municipalities through the NH Community Development Finance Authority; up to \$500,000 is available annually for economic development projects and another \$500,000 is available for public facility housing projects which is the category this project falls into. He explained that \$500,000 is available for emergency grants and up to \$12,000 is available for planning grants. All projects must primarily benefit low and moderate income persons. He added that it's important to note that this project conforms with the city's housing and community development plan goal of "to continue to provide rehabilitation assistance to social service agencies directly serving low and moderate income clients to upgrade facilities, correct code violations, to improve handicap accessibility and to improve energy conservation". Although this project does not involve any displacement or relocation of persons or businesses, the anti-displacement plan outlines the measures that the city would take or the sub recipient would

take to find comparable, suitable housing for persons or businesses if they are displaced or relocated by a project which was funded in part by Community Development Block Grant funds.

Mayor Bouley opened the public hearings for items B and C.

Public Testimony

Mary Jane Wallner, Merrimack Valley Day Care Service Director, thanked Council for approving the feasibility study two years ago explaining that, because of this study, a plan has been laid out as to how they should move forward in renovating and caring for the facility. She indicated that they would use the Community Development Block Grant funds to complete that project.

There being no further public testimony, the Mayor closed the hearings for items B and C.

- 24C. Resolution readopting the City's Displacement and Relocation Policy Statement and Procedures; together with report from the Director of Redevelopment, Downtown Service, and Special Projects.

Action: Public hearing for this item taken with item B.

- 24D. Ordinance Amending Code of Ordinances, Title I, General Code, by adding the following new Article 1-6, Code of Ethics; together with report from the Rules Committee.

Action: City Manager Tom Aspell provided a brief overview.

Mayor Bouley opened the public hearing.

Public Testimony

Judith Eliasberg, resident, questioned whether this proposed ordinance will weaken the procedure than what's currently in place now. She noted that she feels that it is something that shouldn't be weakened.

Craig Greenman, Board of Ethics member, noted that he was surprised to hear about the proposed changes this evening stating that they strike him as relatively substantive. He is not sure where he falls as to whether or not he likes the changes. Referencing the proposed change to the definition of conflict of interest, Mr. Greenman noted that he is not clear on the difference between financial interest and business. He is not sure how widely business should be understood. He indicated that he had spoken to City Solicitor Jim Kennedy who explained that the job of the Board of Ethics is simply a quasi-judiciary one that Council sets the rules to judge by; they advise the Council. His worry with this is that Council could potentially set the rules so that no one could ever be accused of conflict of interest. He asked the Council to allow the Board of Ethics to advise the Council as they think about these things more than they have because they may have something useful to contribute.

Councilor Herschlag referenced Mr. Greenman's use of advising, he noted that the state and other ethics boards allow for Council members to come before the board before a charge is brought so that the ethics board can make an advisory opinion. He asked whether this was

what Mr. Greenman was referring to.

Mr. Greenman stated that he doesn't know the workings of the City government well enough to know what this would look like. He indicated that proposed changes to the ethics ordinance can be reviewed by the Board of Ethics.

There being no further public testimony, the Mayor closed the hearing.

June 8, 2015 Public Hearing Action

25. Resolution amending and restating the Revolving Loan Fund's Program Income Reuse Plan (PIRP); together with a report from the Director of Redevelopment, Downtown Services, and Special Projects.

Action: Councilor Nyhan moved approval. The motion was duly seconded and passed with no dissenting votes.

26. Resolution authorizing the City Manager to submit an application in an amount of up to \$500,000 and to accept and appropriate grant proceeds of up to \$500,000 in Community Development Block Grant Funds on behalf of Merrimack Valley Day Care Services; together with report from the Director of Redevelopment, Downtown Services and Special Projects.

Action: Councilor Shurtleff moved approval. The motion was duly seconded and passed with no dissenting votes, receiving the necessary 2/3rds vote.

27. Resolution readopting the City's Displacement and Relocation Policy Statement and Procedures; together with report from the Director of Redevelopment, Downtown Service, and Special Projects.

Action: Councilor St. Hilaire moved approval. The motion was duly seconded and passed with no dissenting votes.

28. Ordinance Amending Code of Ordinances, Title I, General Code, by adding the following new Article 1-6, Code of Ethics; together with report from the Rules Committee.

Action: Councilor Nyhan moved approval. The motion was duly seconded.

Councilor Herschlag distributed a handout of his proposed changes to the ordinance. He pointed out that the items that he is asking to be amended are in red and the items in red brackets are items he is asking to be removed. He highlighted the changes, within the handout, that he is requesting to be made. A copy of this handout is on file in the City Clerk's Office.

Councilor Herschlag explained that the wording of his proposed amendment is not his; it was drafted for him at his request by a former member of the Planning Board, a former Mayor, and former chair of the state's legislative ethics committee. He thanked Martin Gross for his guidance and generosity in sharing his time. Councilor Herschlag stated that his concern, when looking at conflict of interest, has always been how does it appear to those who the elected represent; it's what the person in the audience, at home or in the streets perceives. He stated that he has been approached by fellow councilors and told that perception is not a

reason for recusal. He noted that, for a board member of an organization and a City Councilor, the reasonable question from fellow Councilors and the public is whose interest would you be serving if you were to rule on an item before the Council that involved your organization; this applies regardless whether there is a financial or business interest. He indicated that as a member of the board or the governing body of your organization, you are required to represent their best interest and, as a City Councilor, you should be committed to represent the best interest of the community. He stated that even if these two interests align, there is still the perception that one cannot act without bias and it's this perception that, they as a Council, must guard against. He indicated that everyone that has spoken to him about this issue strongly supports the amendment that he is proposing and by accepting this amendment, the Council is telling them that when an item comes before the Council, they, the Council, are placing their interest above all others.

Councilor Coen inquired in regards to the definition of a governing body.

Councilor Herschlag responded that, as he understands it, the definition would be a board of directors of any organization.

Councilor Coen questioned why the Rules Committee came up with this recommendation; what was the goal.

Mayor Bouley responded that the purpose of looking at the ethics ordinance was to also look at the Council Rules; they found that there was a conflict between the wording in the rules and the ordinance. He stated that the first goal was to bring the two documents in line with one another so that they were consistent in their language; the second goal is to strengthen the ordinance making it more clear and understandable to everyone in the community. He noted that there was a question as to whether or not someone should physically get up and remove themselves from the table and explained that people do not typically get up to remove themselves from the table. He indicated that Council has really focused on disclosure which he feels is one of the most important pieces that they pride themselves on; they disclose an interest that they may or may not have.

Mayor Bouley indicated that they have had long discussions at the meaning of "removed". Sometimes the feeling of removed simply meant not introducing, not speaking, not making a motion and not voting on - removing oneself from the process. He noted that, with physical removal, there comes the question of intimidation and sending a subliminal message that it's a big deal to a Councilor. He feels that if they simply disclose that they have a conflict of interest and don't participate removing oneself from the process, there is not that intimidation factor. He believes the goal was to clean the language up making it consistent with the Council Rules.

Councilor St. Hilaire indicated that the committee had discussed removing oneself; do you physically remove yourself or remove yourself from participation due to a conflict. For decades, Councilors would remove themselves from the conversation by not participating which is what they do in other legislative bodies. He doesn't feel that someone has to physically stand up to make the process ethical but feels that the best way to remove oneself is simply disclosing what the conflict is.

Mayor Bouley stated that this was modeled after what the NH Legislature does in terms of

disclosure of conflicts. Referencing the definition of a conflict of interest, the Mayor indicated that this was to strengthen the ordinance and to remove any real ambiguity and to clearly define what the conflict of interest was. He believes that this was the language in which the City Solicitor worked with the Bar Association.

City Solicitor Jim Kennedy stated that he was worried about the apparent conflict of interest not having a real concrete understanding as to what this concept was trying to offer. He indicated that the Rules Committee felt that it was ambiguous and that it was important to remove anything that is ambiguous of that nature within this proposed ordinance.

Mayor Bouley clarified that the Council is the legislative body; it is their responsibility to take up ordinances and to adopt or reject changes to those ordinances. He noted that it's the responsibility of the Board of Ethics to interpret those so that if there is a complaint, they have the opportunity to interpret those. He explained that when they looked at the conflict of interest language, they wanted to make sure that it was very clear to the public and Council as to what that conflict would be. He pointed out that the financial interest is not only of him or herself but of a family member as well including their business; they wanted to ensure that they were all inclusive in terms of any type of financial interest for oneself or their family. He stated that the goal was to strengthen and to be clear with the public and the elected members as to what they should or should not be participating on.

Referencing the handout distributed this evening, the Mayor stated that he hasn't had a chance to review it or had the chance to think about all the consequences of what it is. He prefers not to vote on this ordinance this evening and would like to extend an invitation to Mr. Gross to explain what he changed, why he changed it and to get a better understanding as to what he is proposing.

Councilor St. Hilaire indicated that the Rules Committee had three public meetings and anybody that wanted to chime in on changes would have been welcomed at any of the meetings. He is disappointed that people that wanted to change this didn't show up to be part of the discussion. He would've liked to have seen the handout in advance so that they had time to reflect on it and include it within part of the committee discussions.

Councilor Bouchard agreed that she would like to give Mr. Gross the opportunity to come to explain his thoughts.

Councilor Keach noted his disappointment with the handout being distributed to Council this evening when there were ample opportunities for it to be presented before the Rules Committee which is where the work needs to be done. He feels that it's not fair for Council to consider something without that type of work being done by the committee. He is in favor of continuing this and continuing the discussion.

Councilor Werner can appreciate the sense that conflict of interest can extend beyond fiduciary interest and he would like to see language that makes that very clear. In terms of governing body, he noted that Councilor Herschlag interpreted that it was translated within board of directors but Councilor Werner feels that there are people that could have management responsibilities within an organization that qualifies a conflict that is not fiduciary. He feels that this needs more work and supports this being sent back to the committee for additional consideration.

Councilor Champlin appreciates the designer to have a transparent and open government and supports this effort. He supports tabling this item and asking Mr. Gross to meet with the Council during another public hearing. He has questions about the logistical issues around how would he physically remove himself from an item in which he may have a conflict that is located on the consent agenda.

Councilor St. Hilaire moved to table the ordinance. The motion was duly seconded and passed with no dissenting votes.

Reports

29. Report from the Rules Committee recommending revisions to the current Rules of the City Council.

Action: Councilor St. Hilaire moved to table the report. The motion was duly seconded and passed with no dissenting votes.

New Business

Unfinished Business

30. Resolution adopting an amended Comprehensive Transportation Policy; together with report from the Transportation Policy Advisory Committee. (Supplemental information submitted)

Action: Councilor Champlin moved to remove this item from the table. The motion was duly seconded and passed with no dissenting votes.

City Manager Tom Aspell provided a brief overview explaining that the Transportation Policy Advisory Committee reviewed the policy and presented the Council with supplemental information; they considered and made changes that Council had requested at their last meeting. Referencing the amended policy, Mr. Aspell indicated that one recommendation he makes is removing the line at the end that reads: "exceptions to this policy shall be approved by the Concord City Council". He explained that this is redundant because Council approves and accepts changes to any policy.

Councilor Bouchard moved approval with the amendment to remove the last line that reads: "exceptions to this policy shall be approved by the Concord City Council". The motion was duly seconded and passed with no dissenting votes.

31. Resolution amending the official map so as to establish the mapped lines of a future street for a new street from the intersection of Storrs and Theatre Streets southerly to Langdon Avenue; together with report from the Assistant City Planner. (1-16) (2-33I; 2-42) (3-39) (4-37) (5-58) (6-53) (7-40) (8-65) (9-37) (10-36) (11-40)(12-37)(1-42) (2-56) (3-45) (4-18) (5-45) (6-42) (7-38) (8-26) (9-42) (10-41) (11-41)(12-33) (1-47) (2-34) (3-30) (Action on this item tabled following a February 2013 public hearing)

This item remains on the table.

32. Ordinance amending the Code of Ordinances, Title III, Building and Housing Codes; Chapter 27, Housing Maintenance and Occupancy Code; Article 27-1, Housing Maintenance and Occupancy Code, Section 27-1-5, Amendments to the International Property Maintenance Code/2009; together with report from Code Administration. (8-14)(9-26C; 9-29) (10-37) (11-41) (12-38) (1-43) (2-57) (3-46) (4-49) (5-46)(6-43) (7-39) (8-27) (9-43) (10-42) (11-42) (12-34) (1-48) (2-35) (3-31) (Action on this item was tabled after a public hearing was held on September 9, 2013.)

This item remains on the table.

Comments, Requests by Mayor, City Councilors

Councilor Bouchard thanked the City Manager for the beautification that has occurred at the gateway on Loudon Road and Hazen Drive and the landscaping in front of the entire fencing along Loudon Road in front of Keach Park.

Councilor Shurtleff thanked Councilor Todd for last evening's success of opening the time capsule as part of Concord 250.

Councilor Herschlag announced that there will be another Ward Two meeting being held on Tuesday, June 16th, from 6:00 p.m. to 7:30 p.m. at the Newell Post Restaurant. He indicated that city staff will be present to discuss options for a sidewalk on Borough Road, the potential for intersection improvements and the Route 3 project.

Councilor Todd noted that there are many players involved in the success of last evening's Concord 250 event who put in a lot of hard work to make the event a success. He indicated that other events are listed on their website at concord250.org.

Comments, Requests by the City Manager

Consideration of Suspense Items

To be set for a July 13, 2015 Public Hearing

- Sus1 Report from the Main Street Fountain Committee regarding the proposed fountain on the city plaza in front of the State House.

Councilor St. Hilaire moved to consider the suspense item not previously advertised. The motion was duly seconded and passed with no dissenting votes.

Councilor St. Hilaire moved to set this item for a July 13th public hearing. The motion was duly seconded.

Councilor Nyhan inquired whether Council will be provided with information relative to maintenance costs and overall cost of the project. City Manager Aspell responded yes.

The motion to set for a public hearing passed with one dissenting vote.

Adjournment

Councilor Bouchard, in accordance with RSA 273-A:3, II(c), moved to approve the cost items included in the collective bargaining agreement from July 1, 2015 through June 30, 2018 between the Concord Fire Officers Association, Local 3195 ("CFOA") and the City of Concord. The motion was duly seconded.

Mayor Bouley thanked the Concord Fire Officers Association, Local 3195, as well as the city's negotiating team for coming up with a very fair agreement for both our employees and the taxpayers.

The motion to approve passed with no dissenting votes.

The time being 8:01 p.m., Councilor Grady Sexton moved to adjourn the meeting. The motion was duly seconded and passed with no dissenting votes.

A true copy; I attest:

*Michelle Mulholland
Deputy City Clerk*